

Message Text

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FM US MISSION EC BRUSSELS

TO SECSTATE WASHDC IMMEDIATE 3302

INFO ALL EC CAPTIALS 3296

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E.O. 11652: N/A

TAGS: EEC PLOS EFIS US

SUBJECT: STATUS OF EC PROCEDURES TO PUT GIFA INTO FORCE

REFS: (A) STATE 51023, (B) ROME 4044, (C) STATE 43279

1. SUMMARY: THE EC IS JUST BEGINNING TO COME TO GRIPS
WITH THE NECESSARY PROCEDURES TO MEET FULLY ITS OBLIGATIONS
UNDER THE US-EC GIFA. THESE PROCEDURES WILL TAKE SOME 2
TO 4 MONTHS. IN THE MEANTIME THERE IS CONSIDERABLE CRITI-
CISM THAT A FORMALIST US POSITION IS PREVENTING THE ITALIANS
FROM CAPTURING THE SMALL AMOUNT OF FISH REMAINING UNDER
THEIR 1977 QUOTA IN US WATERS EVEN THOUGH THE EC HAS
PERMITTED TH CONTINUATION OF US FISHING IN
EC WATERS FOR ALL OF 1977 WITHOUT FORMALITIES. THE EC
COMMISSION OFFICIALS CONCERNED WITH FISHING ARE INFORMALLY
PROPOSING AN INTERIM REPLY TO THE MARCH 4 US NOTE INFORM-
ING THE EC THAT THE US HAS COMPLETED ITS PROCEDURES IN THE
HOPE THAT THIS WILL PERMIT EARLY ISSUANCE OF FISHING PER-
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MITS TO THE ITALIANS. TH EC IS PREPARED TO GIVE "MORAL
ASSURANCES" IN LIEU OF FORMAL NOTIFICATION THAT THE
EC WILL FULLY MEET ITS OBLIGATIONS UNDER THE GIFA
DURING THIS BRIEF PERIOD WHICH WILL NOT EXTEND INTO
THE MORE IMPORTANT FRENCH AND GERMAN FISHING SEASONS.
ACTION REQUESTED: WE WOULD APPRECIATE IT IF THE EC
PROPOSAL COULD BE CONSIDERED WITH UNDERSTANDING OF

THE POLITICAL RAMIFICATIONS AND A REACTION TRANS-MITTED TO US BY MARCH 23. END SUMMARY.

2. DCM CALLED ON EC COMMISSION DEPUTY DIRECTOR GENERAL FOR EXTERNAL AFFAIRS GALLAGHER ON MARCH 17 TO INQUIRE AS TO STATUS OF EC PROCEDURES TO BRING THE EC-US GOVERNING INTERNATIONAL FISHERY AGREEMENT (GIFA) INTO FORCE. HE NOTED THAT THE DEPARTMENT HAD INFORMED THE COMMISSION BY NOTE ON MARCH 4 THAT THE US HAD COMPLETED ITS INTERNAL PROCEDURES (REF A).

3. GALLAGHER, SAID THAT ALTHOUGH HE NOW FULLY RECOGNIZED THAT, ACCORDING TO ARTICLE XVI OF THE GIFA, THE GIFA CAN ONLY GO INTO FORCE UPON EC NOTIFICATION TO THE US. NOTE THAT ITS INTERNAL PROCEDURES HAVE BEEN COMPLETED, HE HAD SOMEHOW HAD THE IMPRESSION THAT AFTER SIGNATURE OF THE GIFA AND ITS APPROVAL BY CONGRESS, THE US--AS THE COUNTRY OFFERING ACCESS TO ITS FISHING ZONE--WOULD BE READY TO ISSUE FISHING PERMITS TO EC FISHERMEN WHILE THE EC COMPLETES ITS INTERNAL PROCEDURES. UNFORTUNATELY NEITHER SIDE HAD RAISED THE QUESTION OF WHEN EC FISHING COULD ACTUALLY BEGIN AT THE TIME GALLAGHER TOLD AMBASSADOR RIDGWAY IN FEBRUARY 1977 THAT THESE PROCEDURES MIGHT TAKE 3-4 MONTHS.

4. IN HIS EAGERNESS TO GET APPROVAL OF THE GIFA BY THE MEMBER STATES IN TIME TO PERMIT SIGNATURE BY FEBRUARY 15, GALLAGHER ADMITTED THAT HE HAD CONVEYED TO THEM HIS BELIEF THAT IF THE DEADLINE WERE MET, THERE WOULD PROBABLY BE ONLY A MINOR INTERRUPTION IN LIMITED OFFICIAL USE

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EC FISHING ACTIVITY IN THE NEW US 200 MILE FISHERY CONSERVATION AND MANAGEMENT ZONE. THE FACT THAT EC FISHING IN US WATERS MAY BE DELAYED FOR SEVERAL MONTHS IS CAUSING POLITICAL PROBLEMS. THE US IS BEING CRITICIZED, HE SAID, ON THE GROUNDS THAT THE US AND THE EC SIGNED A FISHERY AGREEMENT AND YET THE US REFUSES TO ISSUE FISHING PERMITS TO THE EC ON THE BASIS OF TECHNICALITIES; IN CONTRAST THE EC WITH NO AGREEMENT AND FORMALITIES IS UNILATERALLY PERMITTING US FISHERMEN TO CONTINUE TO FISH IN EC WATERS FOR 1977. HE RECOGNIZED THE VALIDITY OF MISSION OBJECTIONS TO THIS LINE OF REASONING BUT ASSERTED (AND WE CONCUR) THAT IT IS A COMMONLY HELD VIEW HERE AND IN MEMBER STATES.

5. MICHAEL HARDY OF THE COMMISSION'S LEGAL SERVICES, IN REVIEWING THE EC PROCEDURES WHICH MUST BE FOLLOWED TO PUT THE US-EC GIFA INTO FORCE, NOTED THAT THE EC MUST PROCEED WITH CONSIDERABLE CARE SINCE, AS THE

FIRST SUCH FISHERY AGREEMENT CONCLUDED BY THE EC,
IT WILL SET A PRECEDENT FOR ALL THE OTHERS, INITIALLY, THE COMMISSION AS A WHOLE MUST AGREE ON A DRAFT COUNCIL REGULATION APPLYING THE GIFA OBLIGATIONS THROUGHOUT THE MEMBER STATES; THIS MAY TAKE TWO WEEKS. THEN THIS REGULATION MUST BE APPROVED BY THE EC COUNCIL, INCLUDING A DECISION TO PROCEED WITH

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CONCLUSION OF THE AGREEMENT. WHILE HARDY IS OPTIMISTIC THAT THIS REGULATION AS PRESENTLY ENVISAGED WILL MAKE THE AGREEMENT'S OBLIGATIONS DIRECTLY APPLICABLE IN THE MEMBER STATES WITHOUT THE NEED FOR NATIONAL LEGISLATION, MEMBER STATES WILL PROBABLY HAVE TO PROVIDE FOR SANCTIONS IN CASE OF VIOLATIONS UNDER THEIR INTERNAL REGULATIONS. HOWEVER, BEFORE THE COUNCIL CAN ACT, IT MUST OBTAIN AN "OPINION" ON THE REGULATION (AND THE GIFA) FROM THE EUROPEAN PARLIAMENT. THIS PROCEDURE BY ITSELF MAY TAKE 6-8 WEEKS, PARTICULARLY SINCE THERE ARE DIFFERENCES AS TO WHICH PARLIAMENTARY COMMITTEES SHOULD HAVE JURISDICTION OVER FISHERY MATTERS. A "MANAGEMENT" COMMITTEE UNDER THE COMMISSION PRESIDENCY MUST ALSO BE ESTABLISHED TO EXECUTE SOME OF THE OBLIGATIONS UNDER THE AGREEMENT (E.G., THOSE RELEVANT TO PROCESSING OF FISHING PERMITS). ALL RELEVANT DOCUMENTS, OF COURSE, MUST

BE IN SIX LANGUAGES AND PRINTED AND WIDELY DISTRIBUTED A NUMBER OF TIMES.
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6. GALLAGHER EXPRESSED THE VERY STRONG HOPE THAT THE US WOULD AGREE TO AN INTERIM SOLUTION WHICH WOULD PERMIT EC FISHING IN US WATERS PENDING COMPLETION OF THESE PROCEDURES. HE FELT CERTAIN THERE WOULD BE NO SERIOUS OBJECTION BY US FISHING INTERESTS AND CONGRESS SINCE ONLY THE VERY SMALL REMAINING AMOUNT OF THE ITALIAN QUOTAS WOULD BE INVOLVED. HE ASKED US TO OBTAIN WASHINGTON'S INFORMAL REACTION TO A PROPOSED DRAFT NOTE FROM THE EC DELEGATION IN WASHINGTON IN REPLY TO THE DEPARTMENT'S MARCH 4 NOTE PROPOSING THAT THE GIFA GO INTO FORCE AT ONCE PENDING COMPLETION OF NECESSARY PROCEDURES BY THE EC. THE TWO OPERATIVE PARAGRAPHS READ AS FOLLOWS:

BEGIN QUOTE: THE DELEGATION IS INSTRUCTED TO INFORM THE STATE DEPARTMENT THAT THE COMMISSION, ON BEHALF OF THE EUROPEAN ECONOMIC COMMUNITY, IS READY TO ACKNOWLEDGE THE FISHERY MANAGEMENT AUTHORITY OF THE UNITED STATES, AS SET FORTH IN THE FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976, AND THE OBLIGATIONS OF THE COMMUNITY AS SET OUT IN THE AGREEMENT AND TO ASSURE THE GOVERNMENT OF THE UNITED STATES THAT THE TERMS AND CONDITIONS OF THE AGREEMENT WILL BE RESPECTED BY NATIONALS AND VESSELS OF MEMBER STATES OF THE COMMUNITY PENDING FORMAL CONCLUSION OF THE AGREEMENT, WHICH WAS SIGNED ON 15 FEBRUARY 1977.

THE DELEGATION EXPRESSES THE HOPE THAT IN THE LIGHT OF THESE ASSURANCES THE UNITED STATES WILL BE PREPARED TO ISSUE PERMITS SO THAT FISHING MAY BE CONDUCTED PENDING THE COMPLETION OF THE COMMUNITY'S INTERNAL PROCEDURES FOR THE CONCLUSION OF THE AGREEMENT. THE COMMUNITY'S PROCEDURES FOR CONCLUSION HAVE BEEN INITIATED BUT WILL TAKE SOME MONTHS, AS WAS INDICATED DURING THE NEGOTIATIONS, TO COMPLETE. IN ORDER TO
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AVOID AN INTERRUPTION OF FISHING ACTIVITIES BEYOND THAT WHICH HAS ALREADY OCCURRED, WHICH WOULD BE OF CONSIDERABLE SIGNIFICANCE FOR THE FISHERMEN CONCERNED, THE COMMUNITY EXPRESSES THE HOPE THAT THE

GOVERNMENTS OF THE UNITED STATES WILL BE ABLE, HAVING REGARD TO THE ASSURANCES CONTAINED IN THE PRESENT NOTE AND HAVING REGARD TO THE UNINTERRUPTED FISHING ENJOYED BY UNITED STATES FISHERMEN IN COMMUNITY WATERS, TO PROCEED WITH THE ISSUE OF THE PERMITS IN QUESTION. END QUOTE.

7. IF WASHINGTON INDICATES THAT SUCH A NOTE OR A SIMILAR PROCEDURE WOULD BE ACCEPTABLE AS A BASIS FOR ISSUING FISHERY PERMITS TO ITALY, GALLAGHER SAID HE WOULD SEEK APPROVAL FROM THE MEMBER STATES. HE NOTED THAT WHILE THE COMMISSION COULD NOT AT THIS STAGE GIVE THE US FULL LEGAL ASSURANCES THAT THE EC WOULD BE ABLE TO MEET ITS OBLIGATIONS UNDER THE GIFA, HE WOULD BE PREPARED TO GIVE "MORAL ASSURANCES" (BACKED BY COREPER APPROVAL) SINCE ONLY A VERY SMALL AMOUNT OF ITALINA FISHING IS INVOLVED FOR WHICH THE EC COULD FULLY MEET ITS GIFA OBLIGATIONS ON A PRAGMATIC BASIS. HE NOTED, FOR EXAMPLE, THAT THE FEW ITALIAN FISHERMEN CONCERNED WOULD BE INSTRUCTED OF THEIR EXACT OBLIGATIONS UNDER THE GIFA AND WARNED OF THE PRACTICAL CONSEQUENCES OF NON-OBSERVANCE. THE EC DELEGATION WOULD ALSO BE INSTRUCTED TO ACCEPT THE TERMS AND CONDITIONS OF THE FEW ITALIAN FISHING PERMITS WHICH MIGHT BE ISSUED AND TO GUARANTEE PAYMENT OF NECESSARY FEES (PROBABLY BASED UPON PRIOR ITALIAN ASSURANCES TO THE EC). HE ASKED FOR A REPLY TO THIS PROPOSAL BY NEXT WEEK IN ORDER TO PRECLUDE FURTHER POLITICAL CRITICISM BY ANNOUNCING AT THE NEXT SCHEDULED COUNCIL OF THE AGRICULTURAL MINISTERS ON MARCH 25 THAT PROGRESS IS BEING MADE WITH FISHING PERMITS IN US WATERS.

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8. THE DCM SAID THAT HE WAS CERTAIN THE USG WOULD MUCH PREFER THAT THE US-EC GIFA GO INTO FORCE WHEN THE EC CAN NOTIFY US IN DUE COURSE THAT IT HAS COMPLETED ITS INTERNAL PROCEDURES RATHER THAN TO SEEK AN AD HOC IMPLEMENTATION. GETTING THE AGREEMENT OF ALL THE US AGENCIES CONCERNED TO AN INTERIM PROCEDURE COULD TAKE COSIDERABLE TIME AND MIGHT HAVE TO BE REFERRED TO CONGRESS WITH AN UNCERTAIN OUTCOME. HE ALSO EXPRESSED DOUBT THAT THE MAGNITUDE OF THE ITALIAN FISH QUOTAS STILL TO BE CAUGHT WARRANTS THIS SPECIAL EFFORT AND NOTED THAT ANY REMAINING ITALIAN FISH COULD PROBABLY STILL BE CAUGHT LATER IN 1977, SUCH AS IN DECEMBER JUST BEFORE THE 1978 SQUID SEASON. HE ASKED GALLAGHER TO OBTAIN THE MOST RECENT INFORMATION ON THE ITALIAN CATCH IN US WATERS IN JANUARY AND FEBRUARY 1977. HE ALSO ASKED GALLAGHER IF HE WERE CERTAIN IN THE EVENT AN INTERIM IMPLEMENTATION WOULD BE ACCEPTABLE THAT THE EC PROCEDURES COULD BE COMPLETED IN TIME FOR THE START OF THE RELATIVELY LIMITED OFFICIAL USE

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MORE IMPORTANT GERMAN FISHING SEASON IN MID JULY.

9. GALLAGHER PROMISED TO SEEK CATCH FIGURES FROM THE ITALIANS, BUT INSISTED THAT PERMITTING THE EARLY ISSUANCE OF US FISHING PERMITS WAS IMPORTANT FOR POLITICAL REASONS EVEN IF THE AMOUNT OF FISH LEFT TO CATCH WERE MINIMAL. HE ALSO SAID THAT HE WAS CERTAIN THE EC WOULD COMPLETE ALL INTERNAL PROCEDURES IN ORDER TO PERMIT THE GIFA TO GO INTO FORCE BEFORE THE FRG STARTS SERIOUS FISHING.

10. COMMENT: WE HOPE --IF THE QUANTITY OF FISH REMAINING FOR THE ITALIANS TURNS OUT TOBE SUFFICIENTLY SIGNIFICANT AND IF A PROCEDURE FOR THE INTERIM APPLICATION OF THE GIFA

AND ISSUANCE OF FISHING PERMITS IS POSSIBLE WITHOUT CAUSING EXCESSIVE DIFFICULTIES FOR STRAINS WITH CONGRESS -- THAT THE DEPARTMENT WILL RESPOND FAVORABLY TO GALLAGHER'S REQUEST. WHILE THE MISSION AND THE GIFA NEGOTIATING TEAM FROM WASHINGTON HAVE MADE IT PERFECTLY CLEAR FROM THE BEGINNING THAT THE US ISSUANCE OF FISHING PERMITS REQUIRED THAT THE GIFA BE IN FORCE, IT IS EQUALLY CLEAR THAT A MUSUNDERSTANDING AROSE WHICH NEITHER SIDE PICKED UP AT THE TIME. IN ANY CASE, EC THOUGHT THAT FISHING COULD PROCEED SHORTLY AFTER CONGRESSIONAL APPROVAL OF THE GIFA.

11. WE RECOMMEND RESPONSE ALONG FOLLOWING LINES:

A) IF THERE REMAINS A COMMERCIAL SIGNIFICANT AMOUNT OF THE ITALIAN QUOTA WHICH HAS TO BE CAUGHT BEFORE MID-APRIL OR FOREGONE, US IS WILLING TO DO ALL IT CAN TO MOVE INTERIM SOLUTION ALONG LINES EC DRAFT (OR AS AMENDED BY SPECIFICALLY CITED CHANGES) AS RAPIDLY AS POSSIBLE. (THIS LEAVES IT UP TO EC TO COME FORWARD RAPIDLY WITH DEFINITIVE FIGURES ON ITALIAN CATCH UP TO MARCH 1).

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B) SHOULD ITALIAN QUOTA BE, FOR PRACTICAL PURPOSES, EXHAUSTED, WE WOULD PREFER NOT TO MOVE INTERIM SOLUTION NOW ON GROUNDS IT WOULD BE EXCESSIVELY COMPLICATED AND SERVE NO USEFUL PURPOSE. HOWEVER, SHOULD EC INTERNAL PROCEDURES STILL NOT BE FINISHED BY EARLY JUNE, WE WOULD BE WILLING TO DO OUR BEST TO MOVE INTERIM FORMULA IN ORDER MAKE SURE NO INTERRUPTION IN FRENCH AND GERMAN FISHING WHEN THEIR SEASON STARTS IN JULY. (ADVANTAGE OF THIS IS THAT IT KEEPS SOME PRESSURE ON EC TO MOVE ON INTERNAL PROCEDURES.) IN ANY CASE, WE URGE RESPONSE PROIOR TO MARCH 23.HINTON

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